THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION NO.25710 OF 2006

O R D E R *(Per the Hon'ble Sri Justice Bilal Nazki):*

Heard learned counsel for the parties. Counter-affidavit has been filed. With the consent of learned counsel for the parties, the writ petition is being disposed of at this stage.

There is a short controversy. The respondent-Municipality has disconnected electricity supply to the premises of the petitioner on the ground that the petitioner had fell in arrears of property tax. This Court had passed an order on 18-01-2007 granting stay as regards disconnection of the power supply was concerned.

In the counter-affidavit, it has been stated that the respondent has power to order disconnection of power supply on the strength of Sections 91 and 360 of the Andhra Pradesh Municipalities Act, 1965 (for short "the Act").

Section 91 of the Act reads as under-

> *"Property tax when payable:-*
> *The property tax shall be levied every half-year and shall, save as otherwise expressly provided in Schedule II, be paid by the owner of the assessed premises within thirty days after the commencement of the half-year:*
>
> *"Provided that a simple interest at the rate of two percent per mensum shall be charged in case of failure to pay property tax within the due date. Provided further that when payment of property tax is not made within the due date, the Commissioner may, after giving notice to the owner or occupier, disconnect t he essential services to the premises:*

Provided also that all the taxes and dues to the Municipality including the property tax payable to the Municipality shall be liable to be recovered as if they were arrears of land revenue."

Section 360 of the Act reads as under-

"Time for complying with order and power to enforce in default:-

(1) whenever by any notice, requisition, or order under this Act, or under any rule, bye-law or regulation made under it, any person is required to execute any work or to take any measures or to do anything, a reasonable time shall be named in such notice, requisition or order within which the work shall be executed, the measures taken or the thing done.

(2) If such notice, requisition or order is not complied with, within the time so named, the Chairperson, Commissioner or other Officer concerned may cause such work to be executed or may take any measures or do anything which may, in his opinion, be necessary for giving due effect to the notice, requisition or order as aforesaid; and further if no penalty has been specially provided in this Act for failure to comply with such notice, the said personal shall be liable on conviction before a Magistrate to a fine not exceeding fifty rupees for every such offence."

We have gone through both the provisions and we do not find anything either in Section 360 or in Section 91 of the Act, which would empower the respondent to order disconnection of power supply on the ground that the petitioner was defaulter in payment of the property tax. The supply of electricity is being made by a third party Organization under an agreement with the consumers and there is no scope for the respondent to come in between the supplier and the consumers. The only way to recover arrears of property tax is to recover them as arrears of land revenue, that is what is also contemplated by Section 91 of the Act, to which a reference has been made in the counter-affidavit.

Since the respondent has no power under the Act to order disconnection of power supply on the ground that the petitioner was in arrears of property tax, we allow this writ petition and quash the impugned notice. However, the respondent shall be at liberty to recover arrears of property tax as land revenue, in accordance with law, from the petitioner. No order as to costs.

(Bilal Nazki,J)

Dated 8th February, 2007

(Nooty Ramamohana Rao,J)

vm